**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL MISCELLANEOUS APPLICATION NO. 94 OF 2005**

Smt. Chitrakala Alias Pramila
Purushottam Phal Desai,
married, major in age,
housewife, r/o House No.936,
Velvada, Painginim,
Canacona, Goa. ... Applicant

versus

1. State, through Public Prosecutor,

2. Shri Babi Vaman Phal Desai,
major in age,

3. Shri Sandesh Babi Phal Desai,
son of Babi Phal Desai,

4. Shri Nilesh Babi Phal Desai,
son of Babi Phal Desai,

5. Shri Subhash Shankar Baik,
All are major in age,
r/o House No.941/J, Velvada,
Painginim, Canacona, Goa. ... Respondents

Mr. Sudesh Usgaonkar, Advocate for the Applicant.

Mr. C. A. Ferreira, Advocate for Respondent Nos.2 to 5.

**CORAM : N. A. BRITTO, J.**

**DATE : 24TH AUGUST, 2005.**

**ORAL ORDER**

The Applicant is Complainant in C.C. No.16/P/98. The Accused prosecuted in the said complaint has been acquitted by the learned J.M.F.C., Canacona by Judgment/Order dated 23-2-2005 under Sections 352, 323, 504 r/w 34 I.P.C.

2. The Complainant, therefore, seeks leave to appeal against the said acquittal. The case of the Complainant was that on 20-3-1998 at about 8.00 hours the Complainant had gone into a property known as "UTKAFOND" along with her labourers to clear the property of bushes and to pluck cashew apples when at about 10.00 a.m. all the Accused came to the scene and A-2/Sandesh Fall Dessai caught hold of her neck and the remaining Accused gave slaps on the face and shoulders causing body pain and injuries and all the Accused also abused the Complainant with bad words.

3. The Complainant had examined 2 of her labourers in support of her case, namely, P.W.2/Pradip P. Gaonkar and P.W.3/Jayashree Gaonkar, in addition to Head Constable Chandrakant Dessai, who had investigated the case and submitted his report. No reference is found to the said report in the Judgment of the learned trial Court nor the parties have been able to throw any light on the same at the time of hearing of this application.

4. Admittedly, there was a Civil Suit pending between the parties at the time of the incident and not only that the application for temporary injunction filed by the Complainant was dismissed prior to the date of the incident. Although, the incident had taken place on 20-3-1998 the N.C. came to be lodged only 5 days later i.e. on 25-3-1998 and that too without any explanation from the Complainant as regards the delay in lodging the same. The said N.C. was lodged against 3 Accused, namely, A-1/Babi Vaman Fall Dessai, A-2/Sandesh Fall Dessai and one Shamkant Babi Fal Dessai, who is not recorded as an Accused in the complaint.

5. It has been submitted by Mr. Sudesh Usgaonkar, the learned Counsel appearing on behalf of the Complainant that the said N.C. was written based on a written complaint filed by the Complainant on the same day. However, the said submission of the learned Counsel cannot be accepted. A reading of para 5 of the complaint makes it evident that the N.C. was lodged first on 25-3-1998 and only thereafter that the complaint was written through an Advocate and presented on the same day. The learned trial Court has rightly referred to the discrepancies in the names and numbers of the Accused in the N.C. complaint in relation to the complaint filed before the Court as affecting the credibility of the case of the Complainant. Although, the Complainant initially gave a version that her neck was caught hold of by A-2/Sandesh Fal Dessai and the other Accused had given slaps to her on her face and on her shoulders subsequently she went to improve the said version by stating that the Accused had also given fist blows and had assaulted her with a cricket bat and these improvements or exaggerations were rightly taken note of by the learned trial Court. As far as the said second complaint-Exh.PW1/B is concerned, the Complainant subsequently disowned filing the same. As far as the witnesses

examined by her are concerned, the learned trial Court noted the material differences in their version. For example, P.W.2/Pradip P. Gaonkar had implicated A-2/Sandesh Fall Dessai and A-3/Nilesh Fall Dessai while P.W.3/Jayashree Gaonkar had implicated A-2/Sandesh Fall Dessai and A-4/Subhash Naik. Mr. Usgaonkar submits that both the said witnesses had implicated A-2/Sandesh Fall Dessai and, therefore, their evidence could not have been discarded on that count alone. It is to be noted that as per the Complainant these witnesses were not at the place where she was but were on the upper side of the property and probably, therefore, they reached later and it is also quite probable, based on the discrepancies in their evidence that they did not see the actual assault, if at all there was one against the Complainant by the Accused. One does not know why the Complainant delayed in lodging the complaint or for that matter chose not to go for medical examination inspite of the fact that she had not only body pain but also injuries on her.

6. It has been submitted by Mr. C. A. Ferreira, the learned Counsel appearing on behalf of the Respondent Nos.2 to 5 that the learned trial Court has rightly taken into account the

discrepancies and inconsistencies in the evidence of the Complainant and that of her witnesses and has acquitted the Accused. The learned Counsel further submits that the view taken by the learned trial Court is a probable view. I fully agree with the aforesaid submission of the learned Counsel.

7. Consequently, I hereby reject the application for leave to appeal filed by the said Complainant.

**N. A. BRITTO, J.**

**RD**